IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 488 OF 1992

Union of India ..Appellants

versus

M/s. Sakharam Bhaurao, Manmad ..Respondents

AND

FIRST APPEAL NO.770 OF 1992

Union of India ..Appellants

versus

Kachardas Jasraj Brahmecha,

Lasaggaon ..Respondents

AND

FIRST APPEAL NO. 779 OF 1992

Union of India ..Appellants

versus

Eknath Khemchand ..Respondent

AND

FIRST APPEAL NO. 784 OF 1992

Union of India ..Appellants

versus

M/s. Hiralal Kaluram Matha ..Respondent

AND

FIRST APPEAL NO. 787 OF 1992

Union of India ..Appellants

versus

M/s. Eknath Khemchand & Co. ..Respondents

AND

FIRST APPEAL NO. 790 OF 1992

Union of India ..Appellants

versus

Kachardas Jasraj Brahmecha ..Respondent

AND

FIRST APPEAL NO. 1176 OF 1992

Union of India ..Appellants

versus

M/s. Hiralal Kalurma ..Respondents

Mr. A. N. Samant for the Appellants in all the Appeals.

None for the Respondents in all the Appeals.

CORAM : D. G. DESHPANDE,J.

DATE : 6TH MAY, 2005

ORAL ORDER :

1. Heard Mr. A.N. Samant for the Appellants. Nobody is appearing for the Respondents.

2. By these Appeals the Union of India has challenged the order of the Tribunal awarding compensation to the respondents. All the appeals are pending for the last 13 years.

3. Mr. Samant raised only two contentions. Firstly, according to him the claim was filed by the original claimants against two Railways e.g. in First Appeal No. 1176 of 1992 the claim was preferred by the claimants - respondents against General Manager, Central Railway, and General Manager S.E. Railway,Calcutta and the Tribunal passed an award against both the Railways. Therefore, according to Mr. Samant, there can be liability only of one railway and not of both the railways.

4. Secondly, he contended that in all the Appeals the RRs were issued by the Railway as *"said to contain",* and, according to him the respondents did not discharge their burden of proving as to how much material were packed at the time of handing over the consignment to the railway, and therefore, according to him there can be no liability of the railways if the respondents had failed to prove this fact.

5. Out of the two submissions made by Mr. Samant, the first submission is required to be accepted and the second submission is required to be rejected. If at all there is liability of the Union of India, then Decree against one of the railways would be proper and sufficient. In many such appeals of the Union of India I have accepted this contention, therefore impugned judgment will have to be maintained against General Manager, Central Railway only and order against other Railways will have to be set aside.

6. So far as contention of Mr. Samant of RR with the endorsement *"said to contain" ,* the same is required to be rejected.

7. I am referring the facts in First Appeal No. 1176 of 1992, specific number of bags 401 were entrusted to the Railways Ex. Lasalgaon to Raipur and 124 packets were found unfit for human consumption instead of reasonable time of 6 to 7 days for transit the railway took 14 days. As a result of which, part of the consignment was damaged. By contending that RR was to the effect of *"said to contain"*, Mr. Samant wanted this Court to believe that railway was fully absolved of their liability. If at all it was the case of the

respondents that 401 packets were entrusted to the Railway and all of them were destroyed or damaged, then the situation would have been different. However, their case is that 124 packets were found unfit for human consumption. The Tribunal found that there was Assessment Memo jointly signed by both the parties as document A-5 which shows that out of 401 bags, 250 bags were found partly damaged due to water and then all the bags were opened, sorted out and it was found that 126 bags were good, refilled in bags each weighing 40 kgs. and allowed to be removed by the party and balance 124 bags each weighing 40 kgs. were declared unfit for human consumption by the Assistant Medical Officer and left for dumping. These facts themselves show about the quantity of onions that was damaged. There is absolutely no dispute and both the parties have jointly signed the said document, therefore no question arises as to how many bags were actually entrusted to the railway. If the quantity of bags that was damaged was found to be 124 after following the aforesaid procedure, then this defence is not available to the railways and therefore this contention of Mr. Samant, similar, in all the appeals is rejected.

8. In the result, I pass the following order:

ORDER

. All the appeals are partly allowed.

. In all the Appeals, there shall be liability of General Manager, Central Railway only and not of other Railways.

. No order as to costs of all these Appeals.

. All the appeals disposed of along with Civil Applications, if any.

6.05.2005 (D.G. DESHPANDE, J.)